

AMENDED IN ASSEMBLY APRIL 12, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1092**

**Introduced by Assembly Member—~~Lowenthal~~ Members  
Lowenthal, Aroner, Calderon, Cox, Havice, House,  
Jackson, Knox, and Longville**

February 25, 1999

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An act to ~~add Section 23958.5 to amend Sections 23800 and 23805~~ of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1092, as amended, Lowenthal. Alcoholic beverages: licenses: ~~transfers~~.

*Under existing law, the Department of Alcoholic Beverage Control is authorized to place reasonable restrictions upon retail licensees or any licensee in the exercise of retail privileges in various situations.*

*This bill would also permit the department to place reasonable restrictions on these licensees if the department adopts conditions requested by a local governing body.*

~~Under existing law, the Department of Alcoholic Beverage Control is required to make a thorough investigation to determine whether an applicant for the transfer of a license and the premises for which the license is applied qualify for a license and whether the provisions of the Alcoholic Beverage Control Act have been complied with, prior to issuing the license or the transfer.~~

~~This bill would require the department to provide notice of the request for the transfer of off-sale licenses to the local governing body where the premises are located, and would impose a state mandated local program by requiring the local governing body to determine whether the transferee premises would be a problem outlet and would require the local governing body to make recommendations to the department prior to the issuance of the license or the transfer by the department.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes no*.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 23958.5 is added to the Business~~  
 2 *SECTION 1. Section 23800 of the Business and*  
 3 *Professions Code is amended to read:*  
 4 23800. The department may place reasonable  
 5 conditions upon retail licensees or upon any licensee in  
 6 the exercise of retail privileges in the following situations:  
 7 (a) If grounds exist for the denial of an application for  
 8 a license or where a protest against the issuance of a  
 9 license is filed and if the department finds that those  
 10 grounds may be removed by the imposition of those  
 11 conditions.  
 12 (b) Where findings are made by the department  
 13 which would justify a suspension or revocation of a  
 14 license, and where the imposition of a condition is  
 15 reasonably related to those findings. In the case of a

1 suspension, the conditions may be in lieu of or in addition  
2 to the suspension.

3 (c) Where the department issues an order suspending  
4 or revoking only a portion of the privileges to be exercised  
5 under the license.

6 (d) Where findings are made by the department that  
7 the licensee has failed to correct objectionable conditions  
8 within a reasonable time after receipt of notice to make  
9 corrections given pursuant to subdivision (e) of Section  
10 24200.

11 *(e) Upon notice to the licensee from the department*  
12 *adopting conditions requested by the local governing*  
13 *body, or its designated subordinate officer or agency, in*  
14 *whose jurisdiction the license is located. Upon receipt of*  
15 *a request for conditions, the department shall either*  
16 *adopt the conditions requested or notify the local*  
17 *governing body, or its designated subordinate officer or*  
18 *agency in writing of its determination and the reasons for*  
19 *not adopting the proposed conditions. The request for*  
20 *conditions shall be supported by substantial evidence*  
21 *either on the licensed premises or in the immediate*  
22 *vicinity that would be mitigated by the conditions. The*  
23 *department may adopt conditions requested pursuant to*  
24 *this paragraph only when the request is filed within 30*  
25 *days of notice given to the local governing body pursuant*  
26 *to Section 23987 that an application for the transfer of an*  
27 *off-sale retail license has been filed with the department.*  
28

29 SEC. 2. Section 23805 of the Business and Professions  
30 Code is amended to read:

31 23805. The proceedings specified in Section 23800(a),  
32 (b) ~~and~~, (c), (d), and (e) shall be conducted in the same  
33 manner as is required for other proceedings involving  
34 petitions, protests or accusations, and the right of a  
35 respondent in such proceedings to appeal shall include  
36 the right to appeal from an order imposing conditions  
37 upon the licenses involved in the proceedings. If the  
38 department gives notice of conditions pursuant to  
39 subdivision (e) of Section 23800 or denies a petition filed  
40 under Section 23803, the licensee or transferee may,

1 within 10 days after the mailing of such denial, make a  
2 written request for a hearing. The proceedings at such  
3 hearing shall be conducted as provided in Section 24300,  
4 and the respondent shall have the same rights of appeal  
5 therefrom as in disciplinary actions.

6 and Professions Code, to read:

7 ~~23958.5. (a) Subject to the provisions of law and of~~  
8 ~~the department's rules regarding transfer of off-sale~~  
9 ~~licenses, upon receipt by the department of an~~  
10 ~~application for transfer, the department shall:~~

11 ~~(1) Provide notice of the request for transfer to the~~  
12 ~~local governing body, or its designated subordinate~~  
13 ~~officer or body, of the area in which the proposed~~  
14 ~~transferee's premises is located.~~

15 ~~(2) Provide the local governing body, or its designated~~  
16 ~~subordinate officer or body, with all department~~  
17 ~~information regarding any disciplinary action within the~~  
18 ~~past three years for the transferee's premises.~~

19 ~~(b) Within 90 days of notification of an application for~~  
20 ~~transfer of an off-sale license, the local governing body, or~~  
21 ~~its designated subordinate officer or body, shall~~  
22 ~~determine whether the transferee premises is a "problem~~  
23 ~~outlet" based on, but not limited to, any of the following~~  
24 ~~criteria:~~

25 ~~(1) Department disciplinary action.~~

26 ~~(2) Excessive police calls.~~

27 ~~(3) Resident complaints regarding vandalism,~~  
28 ~~loitering, public urination, public intoxication,~~  
29 ~~prostitution, illegal drug activity, disturbance of the~~  
30 ~~peace, drinking in public, harassment of passersby,~~  
31 ~~gambling, theft, assaults, batteries, excessive littering,~~  
32 ~~illegal parking, excessive loud noises, traffic violations, or~~  
33 ~~any other activity harmful to the health, peace, or safety~~  
34 ~~of persons residing, working, or visiting in the~~  
35 ~~surrounding area.~~

36 ~~(c) If the local governing body, or its designated~~  
37 ~~subordinate officer or body, determines the transferee~~  
38 ~~premises to be a problem outlet, it shall recommend to~~  
39 ~~the department conditions to be imposed on the license~~  
40 ~~prior to its transfer to the new owner, including:~~

1 ~~(1) Mandatory training.~~

2 ~~(2) A probationary period for the transferor not to~~  
3 ~~exceed one year, as long as the department determines~~  
4 ~~the transferor is in substantial compliance with imposed~~  
5 ~~operational conditions. If the transferor is not in~~  
6 ~~compliance, the department may extend the~~  
7 ~~probationary period.~~

8 ~~(3) Other operational conditions.~~

9 ~~(d) The department shall impose the local governing~~  
10 ~~body's recommended conditions and any other~~  
11 ~~conditions it deems necessary.~~

12 ~~(e) If the local governing body, or its designated~~  
13 ~~subordinate officer or body, does not make a~~  
14 ~~determination within the 90-day period, the department~~  
15 ~~may approve the application for transfer with or without~~  
16 ~~the imposition of operating conditions.~~

17 ~~(f) The department shall not issue any temporary~~  
18 ~~license to the transferee applicant until after the~~  
19 ~~expiration of the 90-day period. The 90-day period shall~~  
20 ~~commence upon receipt by the local governing body of~~  
21 ~~notification by the department of an application for~~  
22 ~~transfer of an off-sale license.~~

23 ~~SEC. 2. Notwithstanding Section 17610 of the~~  
24 ~~Government Code, if the Commission on State Mandates~~  
25 ~~determines that this act contains costs mandated by the~~  
26 ~~state, reimbursement to local agencies and school~~  
27 ~~districts for those costs shall be made pursuant to Part 7~~  
28 ~~(commencing with Section 17500) of Division 4 of Title~~  
29 ~~2 of the Government Code. If the statewide cost of the~~  
30 ~~claim for reimbursement does not exceed one million~~  
31 ~~dollars (\$1,000,000), reimbursement shall be made from~~  
32 ~~the State Mandates Claims Fund.~~